

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Board of Trustees of the University of)	
Alabama, Licensee of WUOA, Tuscaloosa,)	
Alabama)	CSR-8213-M
)	
v.)	
)	
Cablestar, Inc.)	

MEMORANDUM OPINION AND ORDER

Adopted: January 20, 2010

Released: January 20, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. The Board of Trustees of the University of Alabama, licensee of local commercial television station WUOA-DT, Tuscaloosa, Alabama (“WUOA”) has filed a must carry complaint pursuant to Sections 76.7 and 76.61 of the Commission's rules,¹ against cable operator, Cablestar, Inc. (“Cablestar”), seeking carriage on the latter’s system serving the community of Ragland in the Birmingham, Alabama DMA.² Cablestar’s response sought dismissal of WUOA’s complaint on the ground that Cablestar was carrying WUOA.³ Accordingly, the Media Bureau dismissed WUOA’s complaint as moot.⁴ However, WUOA subsequently filed a request to reinstate its complaint on the grounds that Cablestar violated (i) the Commission’s material degradation requirements by carrying WUOA as a Standard Definition (“SD”) signal when the station was broadcasting in High Definition (“HD”), and (ii) the viewability requirement because WUOA’s signal was not being carried in analog.⁵ Cablestar responded to these assertions,⁶ and for the reasons discussed below, we deny WUOA’s material degradation claim but grant WUOA’s viewability claim and order that Cablestar must make WUOA’s signal available in analog format for its analog subscribers.

¹ 47 C.F.R. §§ 76.7 and 76.61.

² Petition for Special Relief of The Board of Trustees of the University of Alabama (CSR-8213-M), filed Sept. 18, 2009 (“Complaint”).

³ Cablestar Corporation’s Motion to Dismiss the Board of Trustees of the University of Alabama’s Carriage Complaint as Moot, filed Oct. 8, 2009 (“Motion to Dismiss”).

⁴ Letter of Dismissal, dated Oct. 15, 2009 from Steven Broecker, Senior Deputy Chief, Policy Division, Media Bureau. (“Bureau Letter of Dismissal”).

⁵ Request for Reinstatement of Petition for Special Relief and Reply to Motion to Dismiss by WUOA, filed Oct. 21, 2009 (“Request for Reinstatement”).

⁶ Cablestar’s Further Response to University of Alabama Trustees’ Petition for Reinstatement and Carriage Complaint, filed Nov. 12, 2009 (“Further Response”).

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934, as amended (the “Act”), and implementing rules adopted by the Commission, commercial television broadcast stations, such as WUOA-DT, are entitled to assert mandatory carriage rights on cable systems located within their market.⁷ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen.⁸ The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Pursuant to the Commission’s must carry rules, cable operators have the burden of showing that a commercial station that is located in the same DMA is not entitled to carriage.⁹

3. WUOA-DT is a local commercial television station which began broadcasting a High Definition (“HD”) over-the-air digital signal on channel 6 on June 12, 2009, and it is licensed to serve Tuscaloosa, Alabama, in the Birmingham, Alabama DMA.¹⁰ Cablestar is a cable operator providing service to the residents of Ragland, Alabama, which is also in the Birmingham, Alabama, DMA.¹¹ Cablestar asserts it is a small cable system which is not “all digital,” that it has fewer than 2,500 subscribers, is unaffiliated with any large cable operator, has an activated channel capacity of 450 MHz, and purchases a programming package of 48 channels from Coosa Cable Company for transmission to its subscribers.¹² Coosa Cable, located in Pell City, Alabama, owns antennas and equipment necessary to receive television transmissions that it then packages and sends to Cablestar pursuant to an agreement between the parties.¹³

4. On September 18, 2009, WUOA had filed its initial must carry complaint asking the Bureau to compel carriage of its local signal on Cablestar’s cable system.¹⁴ However, prior to WUOA filing its complaint, Cablestar began carrying WUOA on September 1, 2009, as Coosa Cable had begun including WUOA in the package it forwards to Cablestar on that date.¹⁵ Cablestar states it intends to carry WUOA

⁷ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975-77, ¶¶ 41-46 (1993) (“*Must Carry Order*”). The Commission has subsequently extended mandatory carriage rights to digital television stations under Section 614(a) of the Act and has amended its rules accordingly. See *Carriage of Digital Television Broadcast Signals First Report and Order*, See 16 FCC Rcd 2598, 2606 ¶¶ 15-16, 2610 ¶ 28 (2001) (“*DTV Must Carry Order*”); see also 47 C.F.R. § 76.64(f)(4).

⁸ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission’s rules specifies that a commercial broadcast television station’s market is its Designated Market Area as determined by Nielsen Media Research. 47 C.F.R. § 76.55(e)(2).

⁹ See *Must Carry Order*, 8 FCC Rcd at 2990, ¶ 102.

¹⁰ See Complaint at 1; Request for Reinstatement at 3. See also Complaint at Ex. 1, Must Carry Request Letter dated June 12, 2009, from M. Scott Johnson, Counsel to the Board of Trustees to the University of Alabama to Cable Star, Inc., at 1 (“Carriage Request Letter”). WUOA’s carriage request letter also noted that it is the “This TV” network affiliate for the DMA, and it specifically sought carriage on Cablestar’s cable systems serving the community of Ragland. See Carriage Request Letter at 2.

¹¹ See Motion to Dismiss, Affidavit of Peggy A. Dickinson at ¶ 2 (“Dickinson Aff.”).

¹² See Further Response at 2.

¹³ See Motion to Dismiss, Dickinson Aff. at ¶ 2.

¹⁴ See Complaint at 3-4; see also Carriage Request Letter (The station noted that it was broadcasting on digital channel 6, but that – to its knowledge – it was not being carried on Cablestar’s system serving the DMA).

¹⁵ See Motion to Dismiss, Dickinson Aff., at ¶ 3.

through the duration of the current triennial carriage cycle – December 31, 2011.¹⁶ Cablestar currently carries WUOA in Standard Definition (“SD”) format on digital channel 206 of its system and does not yet transmit WUOA or any other signals in an HD format.¹⁷ Cablestar has analog subscribers but does not provide WUOA in analog format. Cablestar asserts that WUOA’s signal is unencrypted and is available for conversion and viewing by analog cable customers through the use of digital-to-analog converter boxes that it makes available to subscribers for a rental fee of \$2.00 per month.¹⁸

5. In light of WUOA’s carriage on Cablestar’s system, its carriage complaint was dismissed by the Bureau on October 15, 2009.¹⁹ However, WUOA subsequently filed a request to reinstate its complaint.

III. DISCUSSION

6. WUOA’s request to reinstate its mandatory carriage complaint is based on two arguments. First, WUOA argues that because Cablestar does not carry the station’s HD broadcast signal in HD on its system, Cablestar may be in violation of the Commission’s material degradation requirement that “HD signals be carried in HD.”²⁰ However, WUOA concedes that Cablestar may meet an exemption from this requirement granted to certain small cable systems.²¹ That exemption frees small cable systems from being required to carry HD signals in HD if they either have 2,500 or fewer subscribers and are not affiliated with a cable operator serving more than 10 percent of all MVPD subscribers, or have an activated channel capacity of 552 MHz or less.²² We find that based upon the facts presented to us, Cablestar meets this exemption – both because it has fewer than 2,500 subscribers and is not affiliated with a large cable operator, and because it has an activated channel capacity of less than 552 MHz.²³ Accordingly, we find that Cablestar is not required to carry WUOA in High Definition.²⁴

7. Second, WUOA argues that Cablestar’s system violates the viewability requirement adopted by the Commission in the *Third Report and Order*, because it does not carry WUOA in an analog format.²⁵ In the *Third Report and Order*, the Commission implemented the “viewability” mandate in Sections 614 and 615 of the Communications Act²⁶ by requiring cable operators to

either: (1) carry the signals of commercial and non-commercial must carry stations in

¹⁶ See *id.*

¹⁷ See Further Response at 2.

¹⁸ See *id.* at ¶ 2-3.

¹⁹ See *Bureau Letter of Dismissal*.

²⁰ See Request for Reinstatement at 3 (citing *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Third Report and Order and Third FNPRM, 22 FCC Rcd 21064, 21067 ¶ 7 (2007) (“*Third Report and Order*”) (“We retain the requirement that HD signals be carried in HD...”)).

²¹ See Request for Reinstatement at 3-4.

²² See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fourth Report and Order, 23 FCC Rcd 13618, 13622-23 ¶ 12 (2008) (“*Fourth Report and Order*”).

²³ See Further Response at 2.

²⁴ We note that an increase in Cablestar’s subscriber base beyond 2,500, or of its channel capacity above 552 MHz, would end this exemption without the need for additional action by the Commission or WUOA. Furthermore, we remind the parties that this exemption will sunset in 2012, barring renewal. See *Fourth Report and Order*, 23 FCC Rcd at 13623 & n.32.

²⁵ See Request for Reinstatement at 4.

²⁶ 47 U.S.C. §§ 534(b)(7), 47 U.S.C. § 535(h).

analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content.²⁷

In other words, a cable system that is not “all-digital” is required to carry analog versions of all must-carry signals to ensure their viewability.²⁸ Cablestar provides analog service, but it does not carry WUOA as an analog signal. WUOA argues that, since Cablestar’s system is not “all-digital,” its digital-only carriage of WUOA violates the viewability requirement, and we agree.²⁹ Accordingly, so long as Cablestar provides analog service to any customer, we will require that Cablestar provide an analog version of WUOA’s signal in order to ensure its viewability.

IV. CONCLUSION

8. We conclude that Cablestar is exempt from the material degradation requirement to carry WUOA’s High Definition over-the-air signal in High Definition on its cable system. However, we find that Cablestar is required to carry an analog version of WUOA’s signal in order to comply with the statutory viewability requirement.

V. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, that the Request for Reinstatement of the Petition for Special Relief filed by The Board of Trustees of the University of Alabama, licensee of local commercial television station WUOA-DT, Tuscaloosa, Alabama **IS GRANTED IN PART**;

10. **IT IS FURTHER ORDERED** that Cablestar, Inc., within 60 days of the date of this order, shall commence carriage of an analog version of WUOA’s signal on its cable system serving Ragland, Alabama.

11. This action is taken under authority delegated by Section 0.283 of the Commission’s rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert
Senior Deputy Chief, Policy Division
Media Bureau

²⁷ *Third Report and Order*, 22 FCC Rcd at 21071 ¶ 17.

²⁸ *See id.* at ¶ 18 (if any “subscribers do not have the capability of viewing digital signals, cable systems must carry the signals of commercial and non-commercial must-carry stations in analog format to those subscribers, after downconverting the signals from their original digital format at the headend.”).

²⁹ *See Request for Reinstatement* at 4.